

warned that their participation would put them at the mercy of any future unpredictable congressional demands.

The States are arguing Congress can change Medicaid, and Congress can condition the funding for those changes on State agreement to them.

But it cannot force changes on the States by threatening them with the loss of the entirety of Federal funds.

Although the Federal Government will pay the vast majority of the cost of expansion, the States also point out that coercion turns on the financial inducement that Congress offers, not the amount a State is coerced to spend.

The critical issue is what is referred to as the "coercion doctrine." The coercion doctrine protects the States' decision whether the inducement is worth the cost.

Among the controlling cases is *South Dakota v. Dole* in 1987. The Supreme Court there upheld a Federal law that threatened States with the loss of 5 percent of Federal highway funds if they did not raise their drinking age to 21.

Remember, that was only 5 percent of their road funds, not 100 percent of their road funds, as in the case of the all-or-nothing in the case of Medicaid, where if you do not go along, you are going to lose everything.

So in that *Dole* case, writing for the majority, Chief Justice Rehnquist noted:

Our decisions have recognized that, in some circumstances, the financial inducement offered by Congress might be so coercive as to pass the point at which "pressure turns into compulsion."

In the years since the *Dole* decision, Federal courts have yet to establish a clear test for coercion. I assume that is what could happen if they would overturn Congress's decision; that there would be a clearer test of coercion in this *Affordable Care Act*.

The Supreme Court will be challenged in this *affordable care act* case to determine where the limits of Federal coercion, if any, lie.

It is difficult to overstate the potential implications of this particular aspect of the *affordable care act* in the case that is being appealed.

There are three specific ways this decision could have a profound impact on Federal policy if the Supreme Court rules in favor of the States.

A ruling for the States could affect future Medicaid policy, current Medicaid policy, and broader Federal-State partnerships.

The expansion of Medicaid in the *Affordable Care Act* was written to minimize the cost to the States. The Federal Government pays for 100 percent of the cost of the Medicaid expansion in the first few years, before transitioning to an approximately 92-percent share of the cost of the expansion.

If the Federal Government cannot require expansion of the Medicaid Program and pick up 92 percent of the tab, what can the Federal Government require? Would a mandatory expansion

be constitutional if the Federal Government permanently paid for 100 percent of the cost? Could the Federal Government mandate future expansions if they were much smaller in scope, such as in the 1989 and 1990 mandatory expansions under those reconciliation bills?

If the Federal Government wanted to require States to cover podiatrists or implement a secondary payer program, could it do so using Federal funds as leverage to require it?

A ruling in favor of the States would raise those questions.

Further, if the current mandatory expansion of Medicaid is unconstitutional, what does that imply for previous expansions and policies?

In the 1989 and 1990 acts, when Congress required States to expand eligibility for women and children, Congress did so without providing any additional funding to the States beyond their normal share, which in the case of Iowa today would be 63 percent Federal, 37 percent State.

If the Supreme Court rules in favor of the States, will previous mandatory expansions to Medicaid be subject to challenge? Will a State be able to challenge the existing enforcement mechanism of withholding Federal dollars if a State wants to ignore a service requirement or an antifraud provision? These questions will then have to be answered.

Finally, a Supreme Court ruling on a coercion test necessarily has broader implications for all Federal-State partnerships. The original *Dole* case was about transportation funding.

A Supreme Court ruling in favor of the States will necessarily bring into question every agreement between the Federal Government and the States where the Federal Government conditions 100 percent of the Federal funds on States meeting requirements that are determined in Washington, DC.

It is certainly possible that such a Supreme Court ruling could require future Congresses to carefully consider a coercion test in designing legislation.

A Supreme Court ruling in favor of the States in this case could not only jeopardize the mandated Medicaid expansion in the *Affordable Care Act* but could challenge the fundamental structure of Medicaid and have broader implications outside health care.

One may ask: Does the Supreme Court have this case before it—and why does it have it before it?—a case with such broad and far-reaching implications? It is because of a massive restructuring of our health care system in a partisan fashion, using nearly every procedural tool at the majority party's disposal in accomplishing the goal of passage.

The constitutionality of this law has been challenged in numerous courts throughout the country. These challenges will soon be heard before the Supreme Court. While most people want to focus on the individual mandate, it is important we do not forget the po-

tential consequence of the Medicaid question before the Court.

It could, obviously, strike the expansion in the *Affordable Care Act*. It could hamstring future Congresses as they consider potential policies for the Medicaid Program in the future. It could threaten the fundamental structure of the Medicaid Program by bringing into question all the requirements on the States in the program today. It could require future Congresses to consider the structure of every Federal-State partnership.

We are here discussing this because the White House and the Democratic majority put their partisan goals ahead of collaboration with Republicans and States to build legitimate public policy—contrary to how most social policy in this country has been devised: Social Security, bipartisan; Medicare, Medicaid, bipartisan; civil rights laws, bipartisan—but not this *Affordable Care Act*, a partisan document.

Now we see that far more than this one specific policy is threatened. If the Supreme Court accepts the States' argument, a host of constitutional questions will surround the operation of many Federal funding streams to the States. It would be difficult to overstate the significance of such a ruling. I have outlined it was not necessary for the Congress to have taken action that might produce that result.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. RUBIO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BENNET.) Without objection, it is so ordered.

CUBA TRAVEL POLICY

Mr. RUBIO. Mr. President, there is a lot of conversation in the building today about one of the provisions that is holding up the omnibus; they are saying this is Cuba travel, families traveling back to Cuba. I have strong opinions about that as well. Suffice it to say that it is important to let my colleagues know what is being asked for in the omnibus, and what will be coming over here if it is kept in, will not prohibit families from traveling to Cuba. It will limit the amount that they can. That is a wise policy, one that I support, because it limits access to hard currency to a tyrannical regime.

I am here to talk about a different part of the Cuba policy, however, Cuban travel, which does not get a lot of notice these days, but it is part of conversations that are ongoing with the administration and the State Department with regard to some of the appointments they have in the Western Hemisphere, and that is the so-called people-to-people travel.

I have here in my hand an immediate release from January 14, 2011, titled "Reaching Out to the Cuban People." It came from the President, where he announced a series of steps to continue efforts to reach out to the Cuban people in support of their desire to freely determine their country's future.

One of the changes they made is to something they call purposeful travel. It says here:

The President believes these actions—

Which I am about to describe—

combined with the continuation of the embargo, are important steps in reaching the widely shared goal of a Cuba that respects the basic rights of all its citizens.

Right here in this release—and I am glad he wrote it—the President is stating that in combination with the embargo, the steps that he wanted to take, the goal of these steps was reaching the widely shared goal of a Cuba that respects the basic rights of all of its citizens. That is the reason why he made these policy changes. So far so good.

Let me tell you one of the policy changes. It is called "restore specific licensing of educational exchanges not involving academic study pursuant to a degree program under the auspices of an organization that sponsors and organizes people-to-people programs."

What that means in plain English is this is not colleges or universities; these are organizations not for degree credits—educational in purpose, but not for degree credits. What we want to do is encourage them or allow them the opportunity to take Americans to Cuba under their auspices.

Again, remember, the goal here is to bring about, as the President stated, "the widely shared goal of a Cuba that respects the basic rights of all of its citizens." That is the purpose of these trips.

I decided to look up some of these trips, and let's look at some of the itineraries. They are very interesting. Let me read you one. This one is from an organization called Insight Cuba. It is located in New York. I am not going to advertise their Web site. Let them pay for it. But I will tell you this. There is an itinerary for something called the Cuban Music & Art Experience. Sounds interesting, the Cuban Music & Art Experience. Let's go to some of the highlights.

Day 2 in Havana. You are going to get to meet with the Castro Ministry of Culture to learn how Cuba promotes the arts on this diverse island. You are also going to get to spend the evening—and this will become a familiar theme here—dusting off your dancing shoes, because tonight you are going to head off to Casa de la Musica. Here you will enjoy performances by local Cuban artists and, of course, dance. They put an exclamation mark after it. This is an important part of this trip. This is day 2 of this trip designed to promote, as the President wrote, "the widely shared goal of a Cuba that respects the basic rights of its citizens."

Day 3 is interesting too. You get to go to this place Casa de la Amistad, which basically means Friendship House. There you will meet with your Cuban "host" which I would bet you right now is members of the Castro government and perhaps enjoy another exciting musical performance. Then you spend the evening of day 3 back at Casa de la Musica for some incredible salsa music and dancing.

Day 4 is the real highlight of this trip. This is not to be missed. You get to fly to Santiago de Cuba. Guess where you get to visit. You get to visit a place called Cuartel Moncada, which is basically an old army barracks where, on July 26 of 1952, Fidel Castro launched the Cuban revolution. You get to visit this place where Fidel Castro's revolution actually began. Imagine. I can see where that begins to further "the widely shared goal of a Cuba that respects the basic rights of all of its citizens."

Guess what you get to do at night. You guessed it. You get to spend the night at a music and local dance club to hear performances by Cuba's most popular artists and you get to dance. It goes on and on.

Day 5 has dancing.

Day 6, you get to visit the historic Granma Province, which is known as the birthplace of Cuban nationality. You get to meet with the Cuban Institute for Friendship Between the People, which is a very catchy title. That night, you get to spend the evening at Casa de la Trova to dance and take in a performance of Cuban artists. It goes on and on.

Day 7.

Day 8.

This is quite an adventure and in pursuit of the government of Cuba that respects the basic rights of all of its citizens.

Let me share another one. Before I get to one, I think this is another Insight Cuba one. This one takes you, on day 1—this is called the Havana Jazz Experience, and on day 1, it takes you to explore the famous Cathedral Square, the City Museum, and the Havana Club Rum Museum. This is part of this effort to bring about freedom and democracy in Cuba. You get to go there. At night, you go to the jazz club La Zorra y el Cuervo. There you get to do some of the best dancing you can ever imagine, in a very intimate setting.

Day 3 brings you to Cojimar, which is a village which is the setting for "The Old Man and the Sea" which won the Nobel prize for literature in 1954, Ernest Hemingway, very interesting. You get to sit there at night and then you do get to go up to the hills where you get to learn about the religion of Santeria, which is an Afro-Cuban religion. You get to learn all about that.

Then at night you get to go back to Havana—you guessed it—for dancing at a local jazz club.

Day 4, you get to go to the infamous now—I have already mentioned it be-

fore—Casa de la Amistad, a historic mansion, where you will have the opportunity to observe a forum regarding United States-Cuba relations put together by the Cuban government, very interesting, in pursuit of the goal of a Cuba that respects the basic rights of all of its citizens. You spend the night at a jazz cafe, where the seaside view is almost as impressive as the musicians who play there nightly. I am guessing now, I am not sure, but there might be some dancing involved on night 4 in Cuba.

Night 5 is quite interesting too, because there you get to learn from the actual Cuban musicians about the sensual and passionate rhythms of their music, and you round out the day with a 2-hour salsa class, in furtherance of freedom and democracy. That is trip No. 2.

There are a lot of these. There is one more. This one is good. This one is called "Cuba for Educators: Ethics & The Revolution." So you go to Cuba to learn about ethics from the Castro regime.

On day 2 you get to visit the Museum of the Revolution where you will learn about the ethical foundations of the Cuban revolution. This is not to be missed. Clearly we want to learn about ethics from the Castro regime. Then you get to go to the Literacy Museum, where you get to learn about Cuba's war on illiteracy, which was one of Fidel Castro's goals in his 1960 speech to the United Nations.

Day No. 3, you get to meet the Ministry of Public Health, which I assure you is a government employee, because it sounds like it, Ministry of Public Health, and you get to discuss why revolutionary ethics demand free public health care, while our own society will not even consider it. Very interesting. It goes on and on. And, by the way, there is a bunch of dancing in this one too. But I think you get the point. This is run by a group called the Center for Cuban Studies.

Why do I say all of this? It is pretty simple. There is this sports show, I think it is on ESPN on Sunday nights where they review NFL highlights. Michael Irvin, who was a great player, has a segment called "Come On, Man," where they put on some ridiculous things that happened during the day. He is like, "Come on, man." When I look at this stuff, you know what I want to say? Come on, man.

This is about promoting democracy and freedom in Cuba? This is not about promoting freedom and democracy in Cuba. This is nothing more than tourism. This is tourism for Americans who at best are curious about Cuba and, at worst, sympathize with the Cuban regime.

You may ask: We are a free society. Why would we restrict that? Here is why. Because this is not just a source of irritation; this is a source of hard currency, of millions of dollars in the hands of the Castro government that they use to oppress the Cuban people,

and to jail and hold hostage an American citizen, who today is being held hostage in Cuba, Alan Gross. By the way, after they took him hostage, we implemented this policy.

So this policy is a reward for what? Here is my challenge to the administration and the State Department. I know you are not going to change your mind. I know you people in this people-to-people stuff. I know someone has sold you a bill of goods that this people-to-people travel is a good idea, it will further democracy and freedom in Cuba. I get that. You are not going to change your mind. But at least examine how this is being implemented, because this is a charade. This is an embarrassment. These people are getting licenses to conduct this outrageous tourism, which, quite frankly, borders on indoctrination of Americans by Castro government officials.

I hope we will continue to look at this, and that this administration, as part of its Western Hemispheric approach, will look at these trips for what they are. They are an outrage. They are grotesque. They are providing hard currency to a regime that oppresses its people, that jails people because they disagree with the government. It is wrong. This is not what we are about as a country. This cannot be what we defend. Even if you agree with this people-to-people theory and concept, you cannot justify how this program is being implemented, or these people who are getting licenses to conduct these kinds of trips.

I hope in our conversations with the State Department about their appointments in the Western Hemisphere, and specifically the nomination of Roberta Jacobsen, we will use that as an opportunity to examine how these programs are being implemented. Because, quite frankly, they are an outrage.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2011—MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 257, H.R. 3630.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 257, H.R. 3630, an act to provide incentives for the creation of jobs, and for other purposes.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to calendar No. 257, H.R. 3630, an Act to provide incentives for the creation of jobs, and for other purposes.

Harry Reid, Max Baucus, Kirsten E. Gillibrand, Jeff Bingaman, Richard J. Durbin, Patrick J. Leahy, Joseph I. Lieberman, Mark L. Pryor, Christopher A. Coons, Patty Murray, Tom Udall, Charles E. Schumer, Mark Begich, Robert P. Casey, Jr., Kent Conrad, Thomas R. Carper.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we proceed to a period of morning business and that Senators be allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM REFORM AND REAUTHORIZATION ACT OF 2011

Mr. DURBIN. Mr. President, I rise in support of H.R. 2867, the United States Commission on International Religious Freedom Reform and Reauthorization Act of 2011.

Many of our Nation's Founders fled religious persecution, and they placed great importance on religious freedom. George Washington summed up the prevailing view when he said, "In this land of equal liberty, it is our boast, that a man's religious tenets will not forfeit the protection of the laws."

In 1791, the first amendment of the Constitution was ratified, enshrining freedom of religion as the "First Freedom" of all Americans. The first amendment became an inspiration to people all over the world who struggle to throw off the yoke of religious persecution.

Throughout our history, the United States has sought to protect and promote the fundamental human right of religious freedom at home and around the world. Just last week, on December 10, we celebrated Human Rights Day, the 63rd anniversary of the Universal Declaration of Human Rights. After World War II, under Eleanor Roosevelt's leadership, the United States spearheaded the ratification of the Universal Declaration, which recognized freedom of religion as a fundamental right of all people.

As the founding chairman of the first-ever Senate subcommittee focused on human rights, I am deeply committed to protecting religious freedom, and I strongly support the mission of the U.S. Commission on International

Religious Freedom. However, as I will outline below, I am concerned that USCIRF has gone astray in recent years. Therefore, I offered an amendment to H.R. 2867, the USCIRF Reauthorization Act, including good-government reforms like term limits for Commissioners, a prohibition on employee discrimination, and a requirement that Commissioners follow Federal travel regulations. My amendment also included changes to H.R. 2867 that will make USCIRF stronger, extending its reauthorization from 2 to 3 years and increasing the number of Commissioners from five to nine. The Durbin amendment will allow the USCIRF to more effectively pursue its mission.

On Monday, the Senate adopted my amendment and passed the USCIRF reauthorization bill on a unanimous vote. The bill is now awaiting consideration in the House of Representatives. USCIRF's current authorization is scheduled to expire tomorrow, December 16, so I urge my colleagues in the House to quickly take up and pass H.R. 2867.

I would like to take a moment to outline the provisions of the amendment that I offered to H.R. 2867.

Although the plain language of USCIRF's authorizing statute limits Commissioners to two, 2-year terms, for a total of 4 years of service, this term limit has never been observed. In fact, several Commissioners have served more than 10 years. The members of many governmental boards and commissions are term limited, and USCIRF would be well served by the new ideas and fresh perspective that new Commissioners would bring.

The House-passed version of H.R. 2867 includes a provision that limits Commissioners to serving two consecutive terms. However, the bill creates two new exceptions to the term limit provision in USCIRF's existing authorization. First, the bill would allow a Commissioner to serve an unlimited number of nonconsecutive terms. Second, the bill would allow each current Commissioner to complete his or her current term and then serve one additional term, regardless of how long the Commissioner has served. As a result, Commissioners who have already served more than 10 years would be permitted to serve an additional full term and unlimited nonconsecutive terms.

These loopholes are a step backwards from existing law and undercut the purpose of a term limit, which is to make sure that new voices from a range of viewpoints and faiths are rotated into the Commission periodically to collaborate in strengthening and shaping the Commission's mandate. In keeping with this spirit, my amendment includes in H.R. 2867 a firm term limit of two, 2-year terms—4 years total—with no grandfathering of current Commissioners.

USCIRF has taken the position that its employees do not enjoy the same antidiscrimination protections as all